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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/246,918	02/09/1999	KARL M. ROBINSON	303.455US2	6845
7590 10/14/2003				
SCHWEGMAN LUNDBERG WOESSNER & KLUTH				
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EXAMINER				
FOURSON III, GEORGE R				
ART UNIT		PAPER NUMBER		
2823				

DATE MAILED: 10/14/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/246,918

Applicant(s)

ROBINSON, KARL M.

Examiner

George Fourson

Art Unit

2823

--Th MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED**FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.**

Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY (check either a) or b)

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
(a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ they raise the issue of new matter (see Note below);
(c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____


3. ☒ Applicant's reply has overcome the following rejection(s): the rejection of claim 4 under 35 USC 112, paragraph 2.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: none.Claim(s) objected to: none.Claim(s) rejected: 2-6, 10-18, 29-38, 50-52, 76 and 77.

Claim(s) withdrawn from consideration: _____

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
10. ☐ Other: _____


George Fourson
Primary Examiner
Art Unit: 2823

Continuation of 5. does NOT place the application in condition for allowance because: Applicant's arguments have been addressed in the office action mailed 5/20/03. Applicant continues to attack the references individually when the references are used in combination in a rejection under 35 USC 103.

In response to applicant's allegation that the rejection(s) does not address the invention as a whole, the process made obvious by the combination of references relied on is encompassed by the instant claims. The rejection does not dissect the claim into discrete elements but instead provides a reasoned statement that one of ordinary skill in the art would be led to the recited process as a whole by the disclosures and suggestions of the references relied on.

Applicant implies that there would not be a reasonable expectation of success when applying the teachings of Gaulier et al and Hayakawa et al to those of Kahihara et al. However, Gaulier et al and Hayakawa et al are directed to formation of metal-oxide-metal capacitors including formation of the capacitor dielectric by anodization of a portion of a metal plate of the capacitor and Kahihara et al is directed to formation of a metal-oxide-metal capacitor including a metal layer on a polysilicon capacitor plate. In view of the teachings of the secondary references there would be reasonable expectation of success that anodization of a portion of the metal layer of Kahihara would produce a dielectric suitable as the capacitor dielectric.